

**IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF OKLAHOMA**

<b>JEREMY PINSON,</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	
<b>vs.</b>	)	<b>Case No. CIV-07-572-F</b>
	)	
<b>JOHN WHETSEL, et al.,</b>	)	
	)	
<b>Defendants.</b>	)	

**ORDER**

On February 23, 2009, Plaintiff filed *pro se* his “Motion to Dismiss” [Doc. No. 136], stating that “this court had denied appointment of counsel previously and Plaintiff, a federal prisoner, has been in constant segregation with minimal access to law library resources and financial support and cannot ably continue this litigation . . . [and] now moves to dismiss.”

The law of this circuit is clear: “Under Rule 41(a)(1)(i), a plaintiff has an absolute right to dismiss without prejudice and no action is required on the part of the court.” *Janssen v. Harris*, 321 F.3d 998, 1000 (10th Cir. 2003). Former Rule 41(a)(1), now Rule 41(a)(1)(A), provides that “the plaintiff may dismiss an action without a court order by filing: (i) a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment . . . .” Fed. R. Civ. P. 41(a)(1)(A)(i). According to the court of appeals, “once a Rule 41(a)(1) dismissal has been filed, ‘the district court loses jurisdiction over the dismissed claims and may not address the merits of such claims or issue further orders pertaining to them.’” *Janssen*, 321 F.3d at 1000 (quoting *Duke Energy Trading & Mktg., L.L.C. v. Davis*, 267 F.3d 1042, 1049 (9th Cir. 2001)); see *Netwig v. Georgia Pacific Corp.*, 375 F.3d 1009,

1011 (10th Cir. 2004). Here, because no defendant has answered Plaintiff's amended complaint or filed a motion for summary judgment, no order of the court is needed for Plaintiff to dismiss his case. Plaintiff's filing of an unequivocal statement that he wants the case dismissed effectuated the dismissal. *See Janssen*, 321 F.3d at 1000; *Netwig*, 375 F.3d at 1010.

IT IS THEREFORE ORDERED that the Clerk of Court shall terminate this action effective upon Plaintiff's notice of voluntary dismissal [Doc. No. 136].

IT IS SO ORDERED this 24<sup>th</sup> day of February, 2009.

  
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BANA ROBERTS  
UNITED STATES MAGISTRATE JUDGE